

# TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1941

No. 70

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IRA TAYLOR, APPELLANT,

vs.

THE STATE OF GEORGIA

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APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

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FILED MAY 3, 1942.



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IRA TAYLOR, APPELLANT,

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[fol. 1]

## IN SUPERIOR COURT OF WILKINSON COUNTY

BILL OF EXCEPTIONS—Filed July 26, 1940

Be it remembered that on the 29th day of April, 1940, at a regular adjourned term of the superior court of Wilkinson County, Georgia, before the Honorable Joe Ben Jackson presiding, there came on to be tried the case of the State of Georgia against Ira Taylor, the same being a prosecution for violation of Penal Code sections 715 and 716 (1933 Code of Georgia, 26-7408 and 7409).

During the trial of said case as aforesaid, to wit, on the 29th day of April, 1940, the defendant presented his demurrer to the indictment, the same having been filed on the said 29th day of April, 1940. After hearing argument thereon, the court overruled the defendant's demurrer to the indictment on each and every ground therein stated, and entered an order accordingly. To said ruling and judgment of the court overruling defendant's demurrer to the indictment, the defendant, on the 29th day of April, 1940, filed his bill of exceptions pendente lite as appears on record, and now assigns error on said ruling and judgment, and says that the court erred in overruling the defendant's demurrer on each and all of the grounds therein stated, as set forth in said bill of exceptions pendente lite of record. The bill of exceptions pendente lite was duly certified and made a part of the record by order of the court dated the 29th day of April, 1940, and the same was duly filed on said date.

Said case thereupon proceeded to verdict and judgment in favor of the State of Georgia and against the defendant Ira Taylor, the jury having brought in a verdict of guilty on said 29th day of April, 1940, and the court having passed sentence pursuant to said verdict on the 29th day of April, 1940.

Thereafter, to wit, on the 29th day of April, 1940, the defendant filed his motion for new trial. The defendant thereafter, in regular course and within the time allowed by law, and at the regular adjourned term of said court, [fol. 2] filed his motion in arrest of judgment. Said motion came on for hearing on the 22nd day of July, 1940, and after hearing argument thereon, the said motion was by the court overruled on each and all of the grounds therein

stated. To this judgment of the court the defendant excepted and now excepts and assigns error thereon, and says that the court erred in overruling said motion in arrest of judgment on each and all of the grounds therein stated.

Thereafter, in regular course and within the time allowed by law, the defendant filed his amended motion for new trial, with the evidence duly approved by the court and the charge of the court properly certified, the same having been filed on the 22nd day of July, 1940. Said motion for new trial, as amended, came on for hearing on said 22nd day of July, 1940, and the recital of facts and the several grounds of the motion were duly approved by the court, and counsel for the defendant having stated in open court that the defendant waived and would not insist upon the general grounds of his motion for new trial; and after hearing argument on said motion, the same was overruled on each and all of the grounds therein stated. To this judgment of the court overruling his said motion, the defendant excepts and says that the court erred in overruling said motion for new trial, as amended, on each and all of the grounds therein stated.

The defendant specifies the following portions of the record in said case as material to an understanding of the errors complained of in this bill of exceptions:

(1) The indictment of the defendant Ira Taylor, returned at the October, 1939, term of Wilkinson superior court, together with all entries thereon.

(2) Defendant's demurrer to the indictment filed on the 29th day of April, 1940, together with the judgment and order of court overruling same of said date.

(3) Exceptions pendente lite filed by defendant Ira Taylor on April 29, 1940, together with certificate of the judge [fol. 3] thereon.

(4) Verdict of the jury rendered April 29th, 1940, together with the sentence of the court thereon.

(5) Motion for new trial filed April 29, 1940, by defendant Ira Taylor, together with the order of the court thereon and other entries.

(6) Motion in arrest of judgment filed by the defendant Ira Taylor, together with all entries thereon, and order of court overruling same.

(7) Brief of the evidence, together with certificate of the judge thereon, dated July 22nd, 1940.

(8) Charge of the court, together with approval of the judge thereon, dated May 20th, 1940.

(9) Refusal of request to charge, together with the certificate of the judge thereon dated April 29, 1940.

(10) Amended motion for new trial, together with the certificate of the judge thereon, dated July 22, 1940.

(11) Order of the court overruling the amended motion for new trial dated July 22, 1940.

(12) Pauper's affidavit signed by Ira Taylor, filed on the 22nd day of July, 1940.

(13) Certificate of attorney T. T. Purdom, counsel for the defendant, signed and certified before the judge of the superior court on the 22nd day of July, 1940.

And now, within the time provided by law, and within twenty (20) days of the entry of the judgment overruling said motion in arrest of judgment and said motion for new trial, as amended, comes the defendant and tenders this, his bill of exceptions, and prays that the same may be certified as provided by law, in order that the errors complained of may be considered and corrected by the Supreme Court of Georgia.

The Supreme Court of Georgia and not the Court of Appeals has jurisdiction of this writ of error, because the case involves constitutionality of Penal Code sections 715, [fol. 4] 716 (Code of Georgia, 1933, 26-7408 and 7409), for a violation of which statute defendant was convicted; all questions other than the constitutionality of the statute having been waived by the defendant.

T. T. Purdom, Attorney for Defendant, Ira Taylor.

P. O. Box No. 12, Sparta, Ga.

[fol. 5]

#### CERTIFICATE

I do certify that the foregoing bill of exceptions is true, and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Wilkinson County,

Georgia, is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the present term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This 22 day of July, 1940.

J. B. Jackson, Judge, Superior Court, Wilkinson County, Georgia.

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#### ACKNOWLEDGMENT OF SERVICE

Due and legal service of the within and foregoing bill of exceptions and certificate thereon acknowledged. Copy received. All other and further notice and service is hereby waived.

This 22 day of July, 1940.

C. S. Baldwin, Jr., Attorneys for the State of Georgia.

Clerk's Certificate to foregoing paper omitted in printing.  
[fol. 6] [File endorsement omitted.]

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[fol. 7] IN SUPERIOR COURT OF WILKINSON COUNTY

#### INDICTMENT

The grand jurors selected, chosen and sworn for the county of Wilkinson, to wit:

- |                           |                       |
|---------------------------|-----------------------|
| 1. Sol Isenberg, Foreman. | 12. V. P. Jackson.    |
| 2. Oscar Walters.         | 13. G. C. Thompson.   |
| 3. W. O. Freeman.         | 14. J. H. Etheridge.  |
| 4. C. G. Kitchens.        | 15. H. E. Bloodworth. |
| 5. R. Rozar.              | 16. H. M. Williams.   |
| 6. T. W. Snow.            | 17. W. W. Hill.       |
| 7. H. N. Lord.            | 18. J. R. Martin.     |
| 8. L. S. Tigner.          | 19. J. M. Youngblood. |
| 9. W. W. Ryles.           | 20. I. C. Golden.     |
| 10. J. B. Stucky.         | 21. W. C. Bentley.    |
| 11. David Miller.         | 22. J. R. Brooks.     |
|                           | 23. W. R. Lamb.       |

In the name and behalf of the citizens of Georgia, charge and accuse Ira Taylor of the county and State aforesaid with the offense of misdemeanor for that the said accused on 25 day of March in the year of our Lord nineteen hundred and thirty nine in the county aforesaid, did then and there unlawfully and with force and arms; after having contracted with R. L. Hardie to do manual labor for him at \$1.25 a day in helping build a house on the farm of R. L. Hardie where he then resided in said county said work to begin when R. L. Hardie called for him to start and to continue until he had worked out the sum of \$19.50, did on the strength of said contract procure an advance on said labor of \$19.50, with intent not to perform same and did fail and refuse to perform same without good and sufficient cause and did fail and ~~refuse to pay same without good and sufficient cause and did fail and~~ refuse to pay the money so advanced back at the time the work was to be performed, to the loss and damage of the hirer contrary to the laws of [fol. 8] said State, the good order, peace and dignity thereof.

R. L. Hardie, Prosecutor; C. S. Baldwin, Jr., Solicitor-General.

Wilkinson Superior Court, Oct. Term, 1939.

### Special Presentment

We, the jury, find the defendant guilty *Guilty*. This the 29 day of April, 1940.

A. E. Bloodworth, Foreman.

Witnesses for the State:

R. L. Hardie, the Defendant.

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### PLEA OF NOT GUILTY

Waives copy of indictment and list of witnesses also waives being formerly arraigned and pleads not guilty.

C. S. Baldwin, Jr., Solicitor-General; Willis I. Allen, Defendant's Attorney.

April 29, 1940.

No. 436. Wilkinson Superior Court, Oct. Term 1939. The State vs. Ira Taylor. Misd. True Bill. Sol Isenberg, Foreman; R. L. Hardie, Prosecutor; C. S. Baldwin, Jr., Solicitor-General. Special Presentment.

[fol. 9] IN SUPERIOR COURT OF WILKINSON COUNTY

THE STATE

VS.

IRA TAYLOR

GENERAL DEMURRER TO INDICTMENT

Now, comes your defendant, Ira Taylor and files this his general demurrer to the State of Georgia's indictment, and as grounds therefor respectfully shows to the court:

First. The indictment against this defendant is based upon and predicated on sections 26-7408 (715 P. C.), and 26-7409 (716 P. C.) of the 1933 Code of Georgia, a copy of said Code sections are hereto attached, made a part hereof, and marked exhibit "A." The crime charged against your defendant is that he has violated said Code sections and is therefore guilty of a misdemeanor.

The statute under which your defendant was indicted, marked exhibit "A," is unconstitutional, illegal and void in that the same is in violation of the 13th amendment of the constitution of the United States, reading as follows:

"Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

Under this statute it is sufficient for a conviction to show, and the court to charge the jury, simply that the accused had made the contract in question, had not completely fulfilled it, had refused to return the money or to perform the labor without good and sufficient cause, without otherwise showing any fraudulent intent on the part of the accused.

In so far as the refusal without just cause to perform the labor called for, or to return the money, is made prima facie [fol. 10] evidence of an intent to defraud, by its necessary operation and obvious effect, the fundamental purpose of the statute is to compel, under the sanction of the criminal law, enforcement of the contract for personal services, and its natural and inevitable effect is to expose to conviction

for crime those who simply fail or refuse to perform contracts for personal services in liquidation of a debt, and thus seeks to provide, the means of compulsion through which performance of such service may be secured.

There is no rational connection between the fact of failing to complete the service or to return the money and the presumption of fraudulent intent, and such a presumption is arbitrary, unreasonable and offends against the prohibition of the 13th amendment of the Federal constitution against involuntary servitude except as punishment for crime. It also offends against said constitutional prohibition by attempting to do indirectly by the creation of a statutory presumption something that it could not do by direct enactment.

Wherefore, said indictment is unconstitutional, illegal and void, and sets forth no offense that has been committed, by this defendant.

Second. Said indictment is further unconstitutional, illegal and void, and sets forth no cause of action against this defendant for the reason that the statute in question, marked exhibit "A" is in violation of an act of Congress of March 2, 1867 (8 U. S. C. A. sec. 56) reading as follows: "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the territory of New Mexico or of any other territory or State which have heretofore established, maintained, or enforced, or by virtue of which any [fol. 11] attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

While the State may impose involuntary servitude as punishment for crime, it may not compel one man to labor for another in payment of a debt, by punishing him as a criminal if he does not perform the service or pay the debt. Since it cannot punish the servant as a criminal for a mere failure or refusal to serve without paying his debt, it is not permitted to accomplish the same result by creating a statutory presumption which, upon proof of no other fact, exposes him to conviction and punishment.



Third. Said indictment is further unconstitutional, illegal and void, and sets forth no criminal act on the part of this defendant for the reason that said statute marked exhibit "A" and said indictment is in further violation of the 14th amendment of the constitution of the United States reading as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws."

The indictment of your defendant is in violation of said amendment he is indicted under a void statute, the court is without jurisdiction to try him and any sentence that the court may pass would be a nullity and his conviction thereunder and his detention thereunder would be illegal.

Wherefore, the defendant prays that these his grounds of demurrer be inquired into by the court and passed upon [fol. 12] and that said indictment be dismissed, stricken, and declared null and void.

— — —, Defendant's Attorney.

Fourth. Said indictment and the facts alleged therein purports to set forth, charge and accuse the defendant of the offense of a misdemeanor in that the defendant has violated sections 26-7408 and 26-7409 of the 1933 Code of Georgia, said statute attached hereto made a part hereof and marked exhibit "A," and section 26-7409 of the 1933 Code of Georgia, as follows: "26-7409 (716 PC) proof of Intent to Defraud.—Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section, (Acts 1903, pp. 90, 91)," is unconstitutional and void for the reason that the presumption created by it (section 26-7409) is so unreasonable and arbitrary as to amount to a denial of due process of law in violation of the 14th



amendment to the constitution of the United States reading as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Said statute is further unconstitutional in that it operates to deny the defendant a fair opportunity to repel it and therefore violates the due process clause of the 14th amendment [fol. 13] ment, said amendment set out above; and for the further reason said section 26-7409 is unconstitutional and violates the 14th amendment to the constitution of the United States because it is not within the province of the legislature of the State of Georgia to declare an individual guilty or presumptively guilty of crime, and for the further reason that the connection between the facts alleged and those presumed by this statute is not sufficient to charge the accused with a criminal offense as reasoning does not lead from one to the other.

Fifth. The crime with which the accused is charged is based upon the act of 1903 pages 90 and 91, Georgia Laws, which act is codified as two Code sections, to wit: 26-7408 and 26-7409, said act attached hereto made a part hereof and marked exhibit "A." Said act of the Georgia Legislature is unconstitutional and void for the reasons that the presumption created by it is so unreasonable and arbitrary as to amount to a denial of due process of law, and that it operates to deny the defendant a fair opportunity to repel it, and that it is not within the province of the legislature of the State of Georgia to declare an individual guilty or presumptively guilty of crime, all of which violates the 14th amendment to the constitution of the United States, said amendment set forth in paragraph four of this demurrer.

Wherefore, the defendant prays that these his grounds of demurrer be inquired into by the court, passed upon and that said indictment be dismissed, stricken, and declared null and void.

T. T. Purdum, Victor Davidson, W. I. Allen, Defendant's Attorney.

## ORDER OVERRULING DEMURRER

Overruled April 29, 1940.

J. B. Jackson, J. S. C. O. C.

[fol. 14] EXHIBIT "A" TO DEMURRER

26-7408 (715 PC.) Procuring money on contract for services fraudulently.—Any person who shall contract with another to perform for him services of any kind, with intent to procure money or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer, money, or other thing of value with intent not to perform such service, to the loss and damage of the hirer, shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor. (Acts, 1903, p. 90).

26-7409 (716 PC.) Proof of intent to defraud.—Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section (Acts 1903, pp. 90, 91).

[fol. 15] IN SUPERIOR COURT OF WILKINSON COUNTY

[Title omitted]

## EXCEPTIONS PENDENTE LITE

Be it remembered in said stated matter that at the April, 1940, term of the superior court of Wilkinson County before the final judgment in the case of The State of Georgia vs. Ira Taylor the court overruled the general demurrers of the defendant, Ira Taylor, to the indictment returned by the grand jury of said county and the allegations and alleged offense charged against him in said bill of indictment whereupon the defendant, Ira Taylor then and there

excepted, now excepts and assigns the same as error, and prays that this his bill of exceptions pendente lite be certified to as true and ordered placed on the record.

This 29th day of April, 1940.

T. T. Purdom, Victor Davidson, W. I. Allen, Defendant's Attorney.

#### CERTIFICATE

The foregoing bill of exceptions pendente lite is hereby allowed and certified to as true. Let the same with this certificate be placed upon the record.

Done in open court this 29th day of April, 1940.

J. B. Jackson, Judge of Superior Court of Wilkinson County, Georgia.

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[fol. 16] IN SUPERIOR COURT OF WILKINSON COUNTY

#### VERDICT

We, the Jury find the defendant guilty *guilty*.

This the 29 day of April, 1940.

A. E. Bloodworth, Foreman.

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IN SUPERIOR COURT OF WILKINSON COUNTY

THE STATE

VS.

IRA TAYLOR

JUDGMENT—April 29, 1940

Whereupon, it is considered, sentenced and adjudged by the court, that the defendant do pay within three days a fine of \$35.00 dollars to include: cost of the solicitor-general, clerk and sheriff, and the cost of the committing court, including the fees of witnesses, if any, and then be discharged, or in default of such payment, that the said defendant do work in a public works camp, or on such other works as the county authorities may employ the convicts, for and during the term of 8 months, fully to be completed

and ended, and then be discharged; and it is further ordered that this sentence begin and be counted from the time of the reception of the said defendant in the public works camp under this order and judgment. In the event this fine is paid this is a probationary sentence as provided by law.

Sentence pronounced and signed this 29 day of April, 1940.

J. B. Jackson, Judge Superior Court Ocmulgee Circuit.

[fol. 17] \* \* \* [Motion for new trial and Motion to arrest judgment omitted] \* \* \*

## IN SUPERIOR COURT OF WILKINSON COUNTY

[Title omitted]

### Brief of the Evidence

Trial on the 29th day of April, 1940, during the April Adjourn Term, 1940, of Wilkinson Superior Court, before his Honor, J. B. Jackson, Judge, and a jury.

#### APPEARANCES

For the State C. S. Baldwin, Jr., Solicitor-General.

For the Defendant Victor Davidson, W. I. Allen,  
T. T. Purdom.

R. L. Hardie, sworn for the State, testified substantially:

Direct examination.

By Mr. Baldwin:

I am R. L. Hardie. I know the defendant, Ira Taylor, quite well. On the 25th day of March, 1939, he made a contract with me to do manual labor at the time I let him have his money.

The type work he was to do was to help me in building a house on my place in Wilkinson County. He was to help me build it when I called on him. I was to pay him \$1.25 a day.

On the strength of that contract I advanced him in money the sum of \$19.50. I let him have the cash on or about the 29th of March. I sent him word when I was ready for him. [fol. 18] Later I went to see this negro myself and asked him why he didn't come on to work. He told me he didn't want to work and thought he would get up the money. He told me he got the word. He has never paid me any of the money back.

If this negro had a good and sufficient cause for failing to do that work, I don't know of it. If he was sick I don't know of it. I don't exactly remember if he was working for some one else; but he was not working for any one else when I needed him. He told me he was tired and said something about being sick, but I saw him at a distance every day.

Since March, 1939, I have seen him working. He has never paid any of that money back and I lost the money (\$19.50) that I advanced him for the reason of him not coming and working as he agreed to do.

I made the contract with him in Wilkinson County. He was to perform the work in Wilkinson County and I advanced him the money in Wilkinson County.

Cross-examination.

By Mr. Allen:

I had known this negro for about four months before the loan that I mentioned. The only business I had had with him besides the advancement of the \$19.50 on this contract was only some business in my store. He traded at my store a little bit. I rented him a house.

I have taken no legal steps besides this prosecution to collect that money. I haven't filed any suit in the Justice of the Peace Court, nor have I had any property attached.

Cross-examination.

By Mr. Davidson:

He moved to my brother-in-law's place which is next to me about January 1st, last year. He had been living in one of my houses. He worked for my brother-in-law. When he came to my place I don't know where he lived. I don't know when he came to my place. He came there before June. As to how long before June I don't know. I don't know if it

was in the spring, I have so much to remember, I couldn't [fol. 19] exactly say. I remember when I let him have the \$19.50. I didn't let him have any money in Toomsboro. I had him arrested in Toomsboro. I understood the negro said that Mr. Wood said that it would take \$2.00 to turn him out. That \$2.00 is not part of the \$19.50. He was to pay \$4.00 a month for the rent of my house. He stayed on my place three months without paying his rent.

This fellow down here and I settled it with the sheriff and let this negro have the money. I turned the money over to him (the defendant).

When I let him have the money I don't know whether or not the sheriff was after him—the store was crowded and I let him have the money to settle up, and he agreed right there in the store, if I did it, he (the defendant) would pay me. He got money twice on the same day. That's not part of the \$19.50.

Well, now, I don't exactly remember when it was I had him arrested the first time. I have so much business I can't remember, but I remember paying that down at Toomsboro. He (the defendant) said he wanted to pay, he said here is \$4.00 if you will let me, I will pay up. I didn't take it.

I don't know how long they kept him in jail. I really don't know if it was two or three months.

He came to live with me before June or July. I let him have the money before he came to live with me. It was about 3/25/39. It was before March 1939 when I let him have the money. I am not sure what day. The reason I am not going to be sure is because "sometimes business in the store, it is a good while before I itemize the account, or other words charge them. It would come back to my memory, then I would have to get them right, about the date I don't remember."

I can't tell you about when he left my place because I have so much business I couldn't keep up with it. He left his things in the house. I went over there, left word at the [fol. 20] house for him to come to go to work, and pay me, or come and move his things out of the house, but he didn't come.

This all happened about the time I took the warrant out for him. I took the warrant out last year. This was since I had him arrested down in Toomsboro. This was about March 5th, 1939.

I first told him I wanted him to help build the house some time in June. It was about June 6th.

I am sure I told him how much I was going to pay him. My mother gave him a dollar to plough for her, and when he came down to live in my house, I thought it would help mother to have him there, to help her work, after he got laid off, he left down there.

I started building the house about the 1st of June, and I called for him to work before that time. I had the agreement to pay him a \$1.25 a day before I started building the house.

State rests.

---

Defendant's Statement—Ira TAYLOR:

The first time I moved to get my money, Mr. Hatcher sent me to the mines to work. I went down and said Mr. Hatcher let me have a house. I told him about it and about that time, Mr. Wood came up there with a warrant and about \$6.00, and he asked me to come and work, and I told him I would unless I was sleepy, you see I work at night, and he never did call on me to work, that I didn't go up, but one evening; after I got gassed at the mine, and I couldn't pay house rent, when I got able to go to work again, they laid me off, laid off a portion of us. I went down to Toomsboro, and went to work, before I had made a pay day, he had Mr. Wood to lock me up, and before I got my things they locked my things up in the house over there. That's all the money I borrowed, \$6.00 first and \$5.75 the last time. He got a check from me down at McIntyre, I owed the doctor a dollar, and he got the check and I didn't get any money out of [fol. 21] it. He told me I could get some, he told me he would give me some when I got him. I didn't get any, he said I owed him too much, now, the time he had me locked up at Toomsboro, Mr. Hatcher asked him if he would take \$5.00 down and \$5.00 a week. He said he wouldn't. He asked me to come back. I haven't signed a contract with him or any one else, since I left Mr. Asbell.

(Mr. Purdom: State whose house that property was locked up in, whose house your stuff was in). It is in Mr. Hardie's house, I rented the house from him, and after I went to Toomsboro and went to work, I got locked up down there, and he had my house and things locked up, and so I



had Mr. Barnes to come over and take sale on it. I told him I didn't owe him but \$8.00. The things are still over there now.

Defendant rests.

---

MR. R. L. HARDIE, recalled for the State, testified substantially:

Direct examination.

By Mr. Baldwin:

This negro never offered to pay any money until I had him indicted. This is what he said about dropping the case "He told me down on the porch when court was going on in April, on Tuesday, morning he came down and he asked me if I was settled it, I told him I thought I got it settled this week."

Cross-examination.

By Mr. Purdom:

My place of business is above McIntyre, I am a country merchant. At times I lend money and help those who trade with me.

I let him (the defendant) have my money at the time he was working at Edgar Bros. Off and on they laid him off a half dozen times, while he was living with me. I thought Mother would get to work him, and I loaned this negro the money to settle up. No part of the money I lent him was for house rent. I lent him the money and he paid up the [fol. 22] warrant. No part of it was for a doctor bill.

I lent him the money to pay up a warrant about March 3d, or 5th, 1939. In the morning I let him have some money. I just don't remember how much I let him have the first time,—it's just like this, I put it on the book before I go out of the store—some one told him he'd better pay him—after that I loaned him money to buy medicine and paid Dr. McBoyd.

I loaned him the money and he says he will work it out because he didn't work regular at the mine, that gave him a three month lay off and I told him I would let him have the money if he would work for me. I let him have the



money to straighten out another matter. He handed it to the deputy sheriff.

I didn't state then when I would start the work, he worked at my mother's and I thought I would let him help her plow.

When I let him have the money he was supposed to start working for me in about a month or six weeks.

I bought the lumber and the weather conditions were such I couldn't get the lumber, I was going to start him working on building the house in about a month or six weeks but the fellow who was cutting logs said he had to wait until the ground dried up, as on the first load he bogged down.

I don't know how long before the lumber came that I had the contract with this negro, I couldn't build the house before I got the lumber and I don't remember exactly how long it was after I made the contract with this negro before I got the first load of lumber.

I made the contract with him along about the second day of 1939. The load of lumber in February bogged down and I didn't get the lumber until June.

You asked me when I made the contract with this negro. It was February 1, 1939, and I got the lumber in June. [fol. 23] Then, it couldn't have been six weeks since he got the money. But, I told him I was going to buy \$150.00 worth of wire and I was going to have the surveyor run some lines and I was going to put up \$200.00 worth of wire, but I didn't get any help out of him.

You ask if I called on him to help put up the wire. "No, sir, he didn't know them."

I don't know when I put up the wire, but I will tell you when we got through with it. It was towards the last of December, 1939.

I built the house before I put up the wire.

This negro was in Kalamazoo. I don't know when he left Kalamazoo.

I wouldn't be sure that this agreement was made in February that he was going to work for me about six weeks later and that I just testified to that, but I will tell you one thing. It would be 3-25-39 when he started off, when he started getting the money.

He started to getting the money on 4-25-39. It is right that on 4-25-39 I made the agreement, that he was to work for me.

He got the money on the day we made the agreement 4-2-39. No, sir, he didn't make the agreement before he got the money, he has got too much sense for that.

Question: "How then could he have made the agreement to work out the \$19.50 if he hadn't got the money before he made the agreement?"

Answer: "Maybe I didn't get you right, you are not going to tangle me up."

Question: "Will you answer the question?"

Answer: "Yes, sir, that's what you want me to do, I didn't bring this negro up here to persecute him."

Question: "Answer the question, go ahead, answer the question."

[fol. 24] By the Court: "Did he get money from you on the day on which he made the contract with you?"

Answer: "He didn't get it all that day."

By the Court: "How much did it take that day?"

Answer: "It was about \$10.50."

By the Court: "Did he make a contract that day?"

Answer: "Yes, sir."

It was not until after the rainy spell in June and July that we started building the house. I could swear this negro was not sick in bed. He was walking around. He could be sick and not in bed. I gave him a long time, then I took out a warrant. I should have taken something else but I didn't."

State rests.

Defendant rests.

I, T. T. Purdom, attorney for Ira Taylor, and I, C. S. Baldwin, Jr., attorney for the State of Georgia, do agree that the above is a true and correct brief, of the evidence. This 12 day of July, 1940.

T. T. Purdom, C. S. Baldwin, Jr.

#### ORDER APPROVING BRIEF OF EVIDENCE

I do hereby certify and approve the above as a true and correct brief of the evidence. This 22 day of July, 1940, I order same filed as part of the record.

J. B. Jackson, Judge Superior Court, Wilkinson County.

[fol. 25] IN SUPERIOR COURT OF WILKINSON COUNTY

[Title omitted]

CHARGE OF THE COURT

GENTLEMEN OF THE JURY:

The grand-jury of this county has returned an indictment against Ira Taylor, the defendant at the bar, in which he is charged with the offense of a misdemeanor. To this indictment the defendant has entered his plea of not guilty; and the indictment on the one hand and the plea on the other form the issue which you, as jurors, have been impaneled to try.

The indictment alleges in the name and behalf of the citizens of Georgia, charge and accuse by special presentment, Ira Taylor, of the county and State aforesaid, with the offense of a misdemeanor, for that the said accused on the 25th day of March, 1939, in the county and State aforesaid, did then and there unlawfully and with force and arms, after having contracted with R. L. Hardie to do manual labor for him at a dollar and a quarter a day, in helping to build a house on the farm of R. L. Hardie, where he then resided in said county. said work to begin when R. L. Hardie called for him to start, and then to continue until he had worked out the sum of \$19.50 did on the strength of said contract, procure an advancement of said labor of \$19.50 with intent to perform same and did fail and refuse to perform same without good and sufficient cause, and did fail and refuse to pay the money so advanced back at the time the work was to be performed to the loss and damages of the hirer, contrary to the laws of said State, the good order, peace and dignity thereof.

The defendant's plea of not guilty challenges and denies every material allegation in this indictment, and the burden is upon the State, before it can ask at your hands the conviction [fol. 26] of the defendant, the burden of proving his guilt, as charged, beyond a reasonable doubt.

Now, gentlemen of the jury, the defendant enters upon his trial with the presumption of innocence in his favor, and this presumption remains with him, abides with him, throughout the trial, until it is overcome by evidence sufficiently strong to satisfy you of his guilt to a reasonable and moral certainty and beyond a reasonable doubt.

Now, a reasonable doubt is just what the term implies. It is a doubt based upon reason, a doubt for which you can give a reason. It is not a fancy or conjecture or supposition that the defendant might be innocent; but, it is such a doubt as a reasonable man would have, act upon, or decline to act upon, in a matter of importance or of grave concern to him. In other words, it is the doubt of a fair-minded, impartial juror, honestly seeking for the truth; and it may arise from a consideration of the evidence, or from a lack of evidence, or from a conflict of evidence, or from the statement of the defendant. If, after considering all the facts and circumstances of this case, giving the defendant's statement just such weight and credit as you think it entitled to receive, your mind is wavering, unsettled, not satisfied, then that is the reasonable doubt under the law. And, if upon a consideration of the evidence and the defendant's statement, or from the defendant's statement alone, such a doubt rests upon your mind, it is your duty to give the defendant the benefit of that doubt and acquit him. If, on the other hand, however, no such doubt rests upon your mind, it would be equally your duty to return a verdict of guilty as to him.

In all criminal trials the defendant shall have the right to make to the court and jury such statement in the case as he may deem proper in his defense. It shall not be under oath and shall have such force only as the jury may think right to give it. They may believe it in preference to [fol. 27] the sworn testimony in the case.

Availing himself of his right under our statute, this defendant has made a statement. You may believe this statement, as I have said, in preference to the sworn testimony in the case, if you see proper so to do. You may believe it entirely as true, you may reject it entirely as untrue. You may believe that statement partially as true, you may reject it partially as untrue. The force, weight and credit to be given to the defendant's statement is a matter entirely for you as jurors honestly seeking for the truth in the case.

Direct evidence is that which immediately points to the question at issue. Indirect, or circumstantial evidence, is that which only tends to establish the issue by proof of various facts, sustaining by their consistency the hypothesis claimed.

To warrant a conviction on circumstantial evidence, the proved facts must not only be consistent with the hypothesis of guilt, but they must exclude every other reasonable hypothesis, save that of the guilt of the accused. I charge you, however, that whether dependent upon direct or circumstantial evidence, the true test in all criminal cases is, not whether the conclusion at which the evidence points may be false, but whether or not the evidence is sufficiently strong to satisfy your minds and consciences to a reasonable and moral certainty and beyond a reasonable doubt, of the defendant's guilt. If the evidence is thus strong, it would be your duty to convict. If it is not thus strong, it would be equally your duty to acquit. And I charge you that your duty as jurors demands, not only the conviction of the guilty, but the acquittal of the innocent as well.

Gentlemen of the jury, this man is indicted under the following section of the criminal Code of Georgia, which is section 715: If any person shall contract with another to perform for him services of any kind, with intent to procure [fol. 28] money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.

Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.

Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract. The State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State

of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause.

Now, gentlemen of the jury, if the State of Georgia has proven each and every material allegation in this bill of indictment to a reasonable and moral certainty and beyond a reasonable doubt, then the form of your verdict would be: "We, the jury, find the defendant guilty." On the other hand, if the State either from the lack of evidence, or for the want of evidence, or for any other reason, has failed to [fol. 29] prove each and every material allegation in this bill of indictment, to a reasonable doubt, it would be your duty to acquit this defendant, then the form of your verdict would be: "We, the jury, find the defendant not guilty."

The defendant contends that he is not guilty, he contends by his statement, by the argument of his counsel, he contends that the State has failed to make out a case under the rules of law of Georgia; he contends the State has not proved each and every material allegation in the bill of indictment to a reasonable and moral certainty and beyond a reasonable doubt. Now, if that be the truth of the case, it would be your duty to acquit this defendant, or for any other reason you are not satisfied that the State has carried the burden, then he should be acquitted.

Now, gentlemen of the jury, if after considering all facts and circumstances of the case, including the defendant's statement, if you are satisfied to a reasonable and moral certainty and beyond a reasonable doubt of the defendant's guilt, it would be your duty to convict him, and the form of your verdict in that event would be: "We, the jury, find the defendant guilty."

On the other hand, gentlemen of the jury, if you are not satisfied to a reasonable and moral certainty and beyond a reasonable doubt that this defendant is guilty, if the State of Georgia has not proven each and every material allegation as contained in the bill of indictment, not one, but each and every one, of his guilt, it would be equally your duty to acquit this defendant, and the form of your verdict would be: "We, the jury, find the defendant not guilty."

When you have made your verdict, date it, sign it by your foreman, and return it into court.

You may retire, gentlemen, and consider your verdict.



[fol. 30] The within and foregoing charge is hereby approved and ordered filed as a part of the record in said case.

This the 20th day of May, 1940.

J. B. Jackson, J. S. C., O. C.

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IN SUPERIOR COURT OF WILKINSON COUNTY

[Title omitted]

DEFENDANT'S REQUESTED CHARGE, REFUSED

Now comes the defendant and request- the Court to charge the jury as follows:

Gentlemen of the jury, I will not charge you section 26-7409 of the Penal Code of Georgia which reads as follows: Satisfactory proof of the contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money, so advanced, with intent thereon at the time said labor was to be performed, without good and sufficient cause, and loss of damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

The reason I refuse to give you this section in my charge is, because it violates the fourteenth amendment to the constitution of the United States as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor [fol. 31] deny to any person within its jurisdiction the equal protection of the laws."

And for the further reason that said Code section and section 26-7408 violates the thirteenth amendment to the constitution of the United States as follows: "Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly con-

victed, shall exist within the United States, or any place subject to their jurisdiction."

T. T. Purdom, Victor Davidson, W. I. Allen.

Refused to charge said request, this April 29th, 1940.

J. B. Jackson, J. S. C., O. C.

[fol. 32] IN SUPERIOR COURT OF WILKINSON COUNTY

[Title omitted]

#### AMENDED MOTION FOR A NEW TRIAL

Now comes Ira Taylor, movant, in the original motion for a new trial filed in the above case, with leave of the court, and amends his original motion for a new trial by adding the following grounds, to wit:

#### Ground No. 1

Because the court erred in charging the jury as follows, to wit:

Gentlemen of the jury, this man is indicted under the following section of the Criminal Code of Georgia, which is section 715:

"If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such services, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor."

Movant avers that said charge was erroneous and not sound as an abstract principle of law.

Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates article one, section one, paragraph two of the constitution of the State of Georgia (Section 2-102 of the 1933 Code of Georgia) as follows: Protection to person and property is the paramount duty of government, and shall be im-



[fol. 33] partial and complete." (b) It was error for the court to charge section 26-7408 (715 P. C.) quoted above as it is unconstitutional violating article 1, section 1, paragraph 2, of the constitution of the State of Georgia.

3. Movant avers that it was also erroneous for the following reasons: (a) said charge was error because the statute is repugnant to and violates article one, section one, paragraph seventeen of the constitution of the State of Georgia (section 2-117 of the Code of 1933, Georgia) as follows, to wit: "There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof." (b) It was error for the court to charge section 26-7408 quoted above (715 P. C.) of the 1933 Code of Georgia as it is unconstitutional violating article 1, section 1, paragraph 17 of the constitution of the State of Georgia, quoted above. (c) Movant avers that the evidence in the case shows that the prosecutor had the defendant indicted to force him by indirection into involuntary servitude and slavery, and to force the said defendant to work against his will for the prosecutor.

4. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates article one, section one, paragraph twenty-one of the constitution of the State of Georgia (section 2-121 of the 1933 Code of Georgia) as follows, to wit: "There shall be no imprisonment for debt."

(b) It was error for the court to charge section 26-7408 (715 P. C.) of the 1933 Code of Georgia, quoted above, as it is unconstitutional violating article 1, section 1, paragraph 21, of the constitution of Georgia, quoted above.

(c) Movant avers that the evidence shows that to sustain a conviction in the case at bar based on this charge of the court will be to imprison the defendant for debt, as punishment for a crime created by an unconstitutional statute.

[fol. 34]

## Ground 2

Because the court erred in charging the jury as follows: "Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: "Satisfactory proof of a contract, the procuring thereon of money or other

things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

1. Movant avers that said charge was erroneous and not sound as an abstract principle of law.

2. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates article one, section one, paragraph three of the constitution of the State of Georgia (section 2-103 of the 1933 Code of Georgia) as follows, to wit: "No person shall be deprived of life, liberty, or property, except by due process of law."

(b) It was error for the court to charge section 26-7409 of the 1933 Code of Georgia as it is unconstitutional violating article 1, section 1, paragraph 3, of the constitution of the State of Georgia.

### Ground 3

Because the court erred in charging the jury as follows, to wit: "Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract. The State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State [fol. 35] of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause."

1. Movant avers that said charge was erroneous and not sound as an abstract principle of law.

2. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph two of the constitution of the State of Georgia, as follows, to wit: Protection to person and property is the paramount duty of government, and shall be impartial and complete."

3. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph three of the constitution of the State of Georgia, as follows, to wit: "No person shall be deprived of life, liberty, or property, except by due process of law."

4. Movant avers that it was also erroneous for the following reasons: (a) Said statute is repugnant to and violates, and is unconstitutional because it violates, article one, section one, paragraph seventeen of the constitution of the State of Georgia, as follows, to wit: "There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof."

5. Movant avers that it was also erroneous for the following reason: (a) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph twenty-one of the constitution of the State of Georgia, as follows, to wit: "There shall be no imprisonment for debt."

[fol. 36]

#### Ground 4

Because the court erred in charging the jury as follows, to wit: "Gentlemen of the jury, this man is indicted under the following section of the Criminal Code of Georgia, which is section 715: If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such services, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor. Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to

the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.'

"Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract. The State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause."

[fol. 37] 1. Movant avers that said charge was erroneous and not sound as an abstract principle of law.

2. Movant avers that it was also erroneous for the following reason:

(a) Said statute is repugnant to and violates, and is unconstitutional because it violates, article one, section one, paragraph two of the constitution of the State of Georgia as follows, to wit: "Protection to person and property is the paramount duty of government, and shall be impartial and complete."

(b) Said statute is repugnant to and violates, and is unconstitutional because it violates, article one, section one, paragraph three of the constitution of the State of Georgia as follows, to wit: "No person shall be deprived of life, liberty, or property, except by due process of law."

(c) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph seventeen of the constitution of Georgia, as follows, to wit: "There shall be within the State of Georgia neither slavery nor involuntary servitude, save as a punishment for crime after legal conviction thereof."

(d) Said statute is repugnant to and violates, and is unconstitutional because it violates article one, section one, paragraph twenty-one of the constitution of the State of Georgia as follows: "There shall be no imprisonment for debt."

#### Ground 5

Because the court erred in charging the jury as follows, to wit: "Now, gentlemen of the jury, paragraph 716 of the

Criminal Code of Georgia reads as follows: "Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

1. Said charge was erroneous because the presumption created by the statute is so unreasonable and arbitrary as to amount to a denial of due process of law in violation of the 14th amendment to the constitution of the United States reading as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law."

(a) Said statute declaring that proof of one fact or a group of facts shall constitute prima facie evidence of the main or ultimate fact in issue is invalid because there is no rational connection between what is proved and what is to be inferred and constitutes a denial of due process of law, under the 14th amendment quoted above.

(b) Said statute creates a presumption that is unreasonable and that is made conclusive of the rights of the person against whom raised and therefore constitutes a denial of due process of law under the 14th amendment, quoted above.

(c) Said statute creates a presumption that is arbitrary or that operates to deny a fair opportunity to repel it in violation of the due process clause of the 14th amendment quoted above.

(d) Said charge which is a statement by the court of section 20-7409 (716 P. C.) of the 1933 Code of Georgia states an act of the legislature of Georgia which is mere legislative fiat to take the place of fact in the determination of issues involving, life, liberty, or property, and it is not [fol. 39] within the province of the legislature to declare an

individual guilty or presumptively guilty of a crime, and therefore said charge violates the due process clause of the 14th amendment quoted above.

(e) Said charge was further erroneous for the court by charging said section authorized the jury, in absence of evidence to find the defendant guilty under the section and authorized the jury to find that the defendant was presumed to have the intent referred to in the preceding section which reads as follows, to wit: "26-7408 (715 P. C.). Any person who shall contract with another to perform for him services of any kind, with intent to procure money or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor," and the court necessarily permitted the presumption to be considered and weighed as evidence against the defendant's statement tending affirmatively to prove such acts and conduct was not criminal, in any respect. And said charge further instructed the jury that the State was relieved of the necessity of making out a case against the defendant under section 26-7408 of the Code of Georgia and that the presumption charged could be considered as evidence by the jury and that the burden was on the defendant to prove that he was not guilty after the court had permitted the unreasonable presumption to be considered and weighed as evidence for the State. Said charge thereby created a presumption that is unreasonable and arbitrary and which violates the due process clause of the 14th amendment to the constitution of the United States, heretofore quoted.

[fol. 40] (f) Said charge was further erroneous because the connection between the facts proved by the State and that presumed by the statute is not sufficient. Reasoning does not lead from one to the other. Wherefore said charge violated the due process clause of the 14th amendment to the constitution of the United States, above quoted.

(g) Said charge was further erroneous because the statute operates to deny the defendant a fair opportunity to repel the presumption created by the statute which is in



violation of the due process clause of the 14th amendment to the constitution of the United States.

### Ground 6

Because the court erred in charging the jury as follows, to wit: "Gentlemen of the jury, this man is indicted under the following section of the Criminal Code of Georgia, which is section 715: 'If any person shall contract with another to perform for him service of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.'

"Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: 'Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.' "

[fol. 41] Said charge was erroneous because the statute is unconstitutional, illegal and void in that the same is in violation of the 13th amendment of the constitution of the United States, reading as follows: Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

Under said charge it is sufficient for a conviction for the prosecution to show simply that the accused had made the contract in question, had not completely fulfilled it, had refused to return the money or to perform the labor

without good and sufficient cause, without otherwise showing fraudulent intent on the part of the accused.

In so far as the refusal without just cause to perform the labor called for, or to return the money is made prima facie evidence of an intent to defraud, by its necessary operation and evidence of an intent to defraud, by its necessary operation and obvious effect, the fundamental purpose of the charge is to compel under the sanction of the criminal law, enforcement of the contract for personal services, and its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal services is liquidation of a debt, and thus seeks to provide the means of compulsion through which performance of such service may be secured.

There is no rational connection between the fact of failing to complete the service or to return the money and the presumption of fraudulent intent, and such a presumption is arbitrary, unreasonable and offends against the prohibition of the 13th amendment of the Federal constitution against involuntary servitude except as punishment for [fol. 42] crime. It also offends against said constitutional prohibition by attempting to do indirectly by the creation of a statutory presumption something that it could not do by direct enactment. Wherefore, said charge is erroneous and illegal.

#### Ground 7

Because the court erred in charging the jury as follows, to wit: "Gentlemen of the jury, this man is indicted under the following section 715: 'If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such services, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.'

"Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: 'Satisfactory proof of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced



with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.' ”

Said charge was erroneous because it is unconstitutional, illegal and void and is in violation of an act of Congress of March 2, 1867 (8 U. S. C. A. sec. 56), reading as follows:

“The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or State of the United States; and all acts, laws, [fol. 43] resolutions, orders, regulations, or usages of the territory of New Mexico, or of any other territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.”

While the State may impose involuntary servitude as punishment for crime, it may not compel one man to labor for another in payment of a debt, by punishing him as a criminal if he does not perform the service or pay the debt. Since it cannot punish the servant as a criminal for a mere failure or refusal to serve without paying his debt, it is not permitted to accomplish the same result by creating a statutory presumption which upon proof of no other fact, exposes him to conviction and punishment.

#### Ground 8

Because the court erred in charging the jury as follows:

“Gentlemen of the jury, this man is indicted under the following section of the Criminal Code of Georgia, which is section 715: ‘If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or after having so contracted, shall procure from the hirer money, or other things of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.’

"Now, gentlemen of the jury, paragraph 716 of the Criminal Code of Georgia reads as follows: "Satisfactory proof [fol. 44] of a contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section."

Said charge was erroneous because the statute is unconstitutional and void for the reason that section 716, quoted above (section 26-7409 of the Code of 1933, Georgia) created a presumption that is so unreasonable and arbitrary as to amount to a denial of due process of law in violation of the 14th amendment to the constitution of the United States reading as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Said charge quoting section 716 P. C. (section 26-7409) was further erroneous because the statute, sec. 26-7409, quoted above, is unconstitutional in that it operates to deny the defendant a fair opportunity to repel it and therefore violates the due process clause of the 14th amendment, said amendment set out above.

3. Said charge is further erroneous for the further reason that said section 716 P. C. (26-7409 Code of 1933) is unconstitutional and violates the 14th amendment to the constitution of the United States because it is not within the province of the legislature for the State of Georgia to declare an individual guilty or presumptively guilty of crime, and [fol. 45] for the further reason that the connection between the facts alleged and those presumed by this statute is not sufficient to charge the accused with a criminal offense as reasoning does not lead from one to the other.

4. Said charge is further erroneous for the reason that charge quotes the act of 1903, pages 90 and 91, Georgia Laws, which act was codified in the Penal Code of Georgia

as two sections, to wit: sections 715 and 716, and which is now codified in the 1933 Code of Georgia as two Code sections, to wit: sections 26-7408 and 26-7409, and said act being and is unconstitutional and void for the reasons that the presumptions created by it are so unreasonable and arbitrary as to amount to a denial of due process of law, and that it operates to deny the defendant a fair opportunity to repel it, and that it is not within the province of the legislature of the State of Georgia to declare an individual guilty or presumptively guilty of crime, all of which violates the 14th amendment to the constitution of the United States, quoted above."

### Ground 9

Because the court erred in charging the jury as follows:

"Gentlemen of the jury, I charge you the burden is upon the State to show affirmatively that the accused failed to perform the services contracted for, if they show a contract, and failed to return the money advanced on the strength of the contract, the State must prove that there was no good reason why contract was not performed, or no good reason why accused did not return the money advanced to him on the strength of the contract. The State of Georgia must show that the accused failed to perform the contract and in failing to perform the contract, the defendant did so without good and sufficient cause."

[fol. 46] 1. Said charge is erroneous because said statute is illegal, unconstitutional, and void and violates the 13th amendment of the constitution of the United States, reading as follows: "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

"Section 2. Congress shall have power to enforce this article by appropriate legislation."

Said charge is further erroneous because the said statute is in violation of an act of Congress of March 2, 1867 (8 U. S. C. A. sec 56), reading as follows: "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the territory or State, which have heretofore established, maintained, or enforced, or by virtue

of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

Said charge is further erroneous because said statute violates the 14th amendment of the constitution of the United States reading as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[fol. 47] Wherefore, said charge is illegal, and erroneous.

#### Ground 10

Because the court erred in refusing the following request to charge: Gentlemen of the jury, I will not charge you section 26-7409 of the Penal Code of Georgia which reads as follows: "Satisfactory proof of the contract, the procuring thereon of money or other things of value, the failure to perform the services so contracted for, or failure to return the money, so advanced, with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section "The reason I refuse to give you this section in my charge is, because it violates the fourteenth amendment to the constitution of the United States as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And for the further reason that said Code section and section 26-7408 violates the thirteenth amendment to the constitution of the United States as follows: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the

party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Said charge being pertinent and applicable to the facts of the case, and movant having submitted such request to charge in writing before the jury retired to consider their verdict.

[fol. 48] (a) That said written request was accurate and sound as a proposition of law.

(b) That the request was not covered or substantially covered by the general charge.

(c) That the indictment was predicated on section 26-7408 of the Code of Georgia reading as follows:

"If any person shall contract with another to perform for him services of any kind, with intent to procure money or other things of value thereby, and not perform the services contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other things of value with intent not to perform such services, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor," and section 26-7409 of the Code of Georgia, quoted above. The evidence introduced by the State was for the purpose of making out a case under sections 26-7408 and 26-7409 of the 1933 Code of Georgia, and the failure and refusal of the Court to give the above set forth charge misled the jury and led the jury to believe that they could find the defendant guilty of a crime based on void, illegal, and unconstitutional statutes, to wit: sections 26-7408 and 26-7409. Whereas, if said requested charge had been given by the court the jury would have known that said sections of the Georgia Code were unconstitutional, void and illegal, and that as a result thereof the defendant could not be convicted under the evidence introduced at the trial of the case.

Said refusal to charge was erroneous because the statute under which the defendant was indicted was arbitrary, unreasonable, null and void and in violation of the 14th amendment of the constitution of the United States and of article 1, section 1, paragraph 3 (Code of Georgia 2-103) in that it creates a presumption of fraudulent intent on the part of the defendant by mere proof of a violation of a simple contract without affording the defendant a fair opportunity to repel said presumption of fraudulent intent.

The defendant was helpless in that the laws of Georgia did not permit him to testify under oath that he did not intend to injure or defraud his employer. Thus the defendant stood stripped by the statute and by the charge of the court of the presumption of innocence and was convicted as a common cheat and swindler merely upon evidence of a simple breach of contract. The defendant was thus precluded from the right to present his defense to the main fact thus presumed by the statute, and in that respect the statute failed to afford him a reasonable opportunity to submit to the jury in his defense all of the facts bearing upon the issue and thus fails to provide him equal protection and due process of law as required by the Federal and State constitutions.

Wherefore, movant prays that these his grounds for new trial be inquired of by the court, and that a new trial be granted him.

T. T. Purdom, Attorney for Defendant, Ira Taylor.  
P. O. Box No. 12, Sparta, Ga.

The recital of facts contained in the foregoing amended motion for new trial are hereby approved as true and correct. Let the same be filed as a part of the record.

This 22nd day of July, 1940.

J. B. Jackson, Judge Superior Court Ocmulgee Circuit.

[fol. 50] Service of the within amended motion for new trial is hereby acknowledged. Copy and all other and further service or notice waived.

This 22nd day of July, 1940.

C. S. Baldwin, Jr., Solicitor-General.

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#### IN SUPERIOR COURT OF WILKINSON COUNTY

#### ORDER OVERRULING MOTION FOR NEW TRIAL

This motion for new trial coming on regularly to be heard, after hearing argument, it is considered, ordered and adjudged that a new trial be and the same is hereby denied.

This 22nd day of July, 1940.

J. B. Jackson, Judge Superior Court Ocmulgee Circuit.

Pauper affidavit omitted in printing.

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[fols. 51-52] Notice of appeal omitted in printing.



Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 53] IN SUPREME COURT OF GEORGIA

No. 13498

TAYLOR

v.

THE STATE

By the COURT:

1. The act approved August 15, 1903 (Ga. L. 1903, p. 90), entitled, "An act to make it illegal for any person to procure money, or other thing of value, on a contract to perform services, with intent to defraud, and to fix the punishment therefor, and for other purposes," is not violative of the 13th amendment to the constitution of the United States (Code, § 1-813), or of article 1, section 1, paragraph 17, of the constitution of Georgia (Code, § 2-117), prohibiting slavery or involuntary servitude except as punishment for crime. Nor is the act violative of the provisions forbidding peonage, found in the United States Revised Statutes, §§ 1990, 5526 (8 U. S. C. A. 56), enacted to secure the enforcement of such amendment. *Latson v. Wells*, 136 Ga. 681 (71 S. E. 1052); *Wilson v. State*, 138 Ga. 489; *Townsend v. State*, 124 Ga. 69 (75 S. E. 619).

2. The act approved August 15, 1903 (Ga. L. 1903, p. 90), is not violative of the due-process clause and the equal-protection clause of the 14th amendment to the constitution of the United States (Code, § 1-815), or of article 1, section 1, paragraphs 2 and 3, of the constitution of Georgia (Code, §§ 2-102, 2-103). See *Vance v. State*, 128 Ga. 661 (57 S. E. 889).

3. Nor is the said statute violative of article 1, section 1, paragraph 21, of the constitution of Georgia (Code, § 2-121), prohibiting imprisonment for debt. *Lamar v. State*, 120 Ga. 312 (47 S. E. 958); *Lamar v. Prosser*, 121 Ga. 153 (6) (48 S. E. 977); *Banks v. State*, 124 Ga. 15 (4) (52 S. E. 74, 2 L. R. A. (N. S.) 1007).

[fol. 54] 4. It follows the court did not err in charging the jury in the terms of the statute, or in refusing defendant's



request to charge that the statute was unconstitutional and void.

(a) The request to overrule *Lamar v. State*, *Lamar v. Prosser*, *Banks v. State*, *Townsend v. State*, *Vance v. State*, *Latson v. Wells*, and *Wilson v. State*, is denied.

(b) The decisions in *Bailey v. Alabama*, 219 U. S. 219, *Manley v. Georgia*, 279 U. S. 1, and *Western & Atlantic R. Co. v. Henderson*, 279 U. S. 639, do not require a different result. See *Wilson v. State*, *supra*.

5. In this case a copy of a pauper affidavit was transmitted with the record to the Supreme Court. The affidavit was as follows:

"State of Georgia v. Ira Taylor. Appeal from verdict of guilty to a misdemeanor. Superior Court Wilkinson County, Ga.

"Personally appeared before the undersigned Ira Taylor, defendant, who on oath says that he is unable to pay the costs, because of his poverty, in said case. Ira his (X) mark Taylor. Defendant, Ira Taylor.

"Sworn to and subscribed to before me this 23rd day of May, 1940. W. E. Boyer, N. P. Ex of. J. P."

Held: (a) It will be presumed from the recitals on the face of the affidavit that it was executed in a county in Georgia where the person before whom it was taken was a notary public and ex-officio justice of the peace authorized to administer the oath. *Abrams v. State*, 121 Ga. 170 (3) (48 S. E. 965); *Stidham v. Tanner Grocery Co.*, 47 Ga. App. 114 (169 S. E. 759).

(b) In *Abrams v. State*, *supra*, the officer who administered the oath was an officer commissioned by the Governor, and was of the same character as the officer in the present case. In *Dawson v. Dawson*, 106 Ga. 45 (2) (32 S. E. 29), the attesting officer was a mere commercial notary [fol. 55] public, who was not required to be commissioned by the Governor. If this would not afford basis for a distinction, the decision in that case, having been concurred in by only four Justices, would yield to *Abrams v. State*, *supra*, concurred in by all the Justices.

(c) The affidavit was sufficient to relieve the plaintiff in error or his attorney from the payment of costs in bringing the case to the Supreme Court.

6. In view of the fact that the defendant relies solely on constitutional grounds, it is unnecessary to rule upon the sufficiency of the evidence to support the verdict.

Judgment affirmed. All the Justices concur.

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OPINION—March 13, 1941

ATKINSON, Presiding Justice :

Ira Taylor was indicted for violation of the act of 1903 (Ga. L. 1903, pp. 90, 91; Code, §§ 26-7408, 26-7409), as follows: "Any person who shall contract with another to perform for him services of any kind, with intent to procure money or other thing of value thereby, and not to perform the service contracted for, to the loss and damage of the hirer, or, after having so contracted, shall procure from the hirer money, or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, shall be deemed a common cheat and swindler, and upon conviction shall be punished as for a misdemeanor.

\* \* \* Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section." The defendant interposed a demurrer on [fol. 56] the grounds that the statute violates (a) the 13th amendment to the constitution of the United States, which prohibits slavery or involuntary servitude, except as punishment for crime (Code, § 1-813); (b) an act of Congress of March 2, 1867, prohibiting peonage within the several States (8 U. S. C. A. 56); (c) the due-process clause and the equal-protection clause of the 14th amendment of the constitution of the United States (Code, § 1-815). Exceptions pendente lite to an order overruling the demurrer were filed. On the trial the judge charged the jury in the language of the statute, and refused the defendant's request for instruction based on the alleged unconstitutionality of the statute. A verdict was returned, the jury finding the defendant guilty. The defendant filed a motion for

new trial, and a motion in arrest of judgment. In addition to the constitutional grounds set out in the demurrer, the motion in arrest of judgment charged that the statute was violative of the provisions of the constitution of Georgia which prohibit slavery or involuntary servitude except as punishment for crime; also the provision of the constitution prohibiting imprisonment for debt; and the equal-protection and due-process clauses. The exception is to an order overruling the motion in arrest, and to the denial of a new trial. Error was also assigned on the exceptions pendente lite. In the brief of the attorney for the plaintiff in error it is stated: "Inasmuch as the defendant in seeking to set aside his conviction relies solely on constitutional grounds, the evidence set out in the record is material only in so far as it relates to these grounds."

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[fol. 57] IN SUPREME COURT OF GEORGIA

IRA TAYLOR

v.

THE STATE

JUDGMENT—March 13, 1941

This case came before this court upon a writ of error from the superior court of Wilkinson county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

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[fol. 58] IN SUPREME COURT OF GEORGIA

No. 13498

IRA TAYLOR, Appellant,

vs.

THE STATE OF GEORGIA, Appellee

PETITION FOR APPEAL—Filed April 8, 1941

To the Honorable Supreme Court of the State of Georgia:

Considering himself aggrieved by the final decision of the Supreme Court of Georgia in the above entitled cause,

the Appellant herein, Ira Taylor, hereby prays that an Appeal be allowed to the Supreme Court of the United States, and for an order fixing the amount of the Bond as security for costs therein, and for an order approving the Bond.

#### ASSIGNMENTS OF ERROR

And the said Appellant, Ira Taylor, assigns the following errors in the Record and proceedings in the said case:

(1) The Supreme Court of Georgia erred in holding that the Act of August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the 13th Amendment to the Constitution of the United States which prohibits slavery or involuntary servitude except as punishment for crime, nor violative of the Act of Congress forbidding peonage found in the United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56), enacted to secure the enforcement of the 13th Amendment to the Constitution of the United States.

(2) The Supreme Court of Georgia erred in holding that the Act of August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the Due Process and Equal Protection [fol. 59] Clauses of the 14th Amendment to the Constitution of the United States.

(3) The Supreme Court of Georgia erred in holding that the Act of August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the 13th Amendment to the Constitution of the United States nor of the Act of Congress forbidding peonage found in United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56), because, in so far as the refusal, without good and sufficient cause, to perform the labor contracted for, or to return the money advanced under the contract, is made by the Statute presumptive evidence of an intent to defraud, the purpose, operation and effect of the Statute is to compel a man to labor for another in payment of a debt, thus compelling under the sanction of the criminal law the enforcement of a contract for personal service, and exposing the accused to conviction and punishment for crime merely upon proof of a breach of contract for personal service in liquidation of a debt.

(4) The Supreme Court of Georgia erred in holding that the Act approved August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the Due Process Clause of the 14th

Amendment to the Constitution of the United States, because in so far as the refusal without good and sufficient cause to perform the labor contracted for or to return the money, is made by the Statute presumptive evidence of an intent to defraud, the presumption is unreasonable and arbitrary in that the failure to return the money or to complete the labor bears no logical relation to the fact presumed, and points to no specific act or omission on the part of the accused tending to show any fraudulent intent, and operates to deny to the accused a fair opportunity to repel it, the [fol. 60] presumption of guilt being made by the Statute sufficient to outweigh the presumption of innocence, and putting the burden on the accused to negative or explain away every fact which might tend to show his fraudulent intent, especially since under the laws of Georgia the accused may not for the purpose of rebutting the statutory presumption testify as a witness under oath.

(5) The Supreme Court of Georgia erred in holding that the Act approved August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the due process clause of the 14th Amendment to the Constitution of the United States, because the Statute is too vague and indefinite to provide a sufficiently ascertainable standard of guilt, the Statute failing to define what is meant by "good and sufficient cause" but leaves the standard of guilt to be fixed by the whims or idiosyncracies of courts or juries rather than by the terms of the Statute itself and fails to give to the accused sufficient information as to the nature and cause of the accusation.

(6) The Supreme Court of Georgia erred in holding that the Act of August 15, 1903 (Georgia Laws 1903, page 90) is not violative of the Equal Protection Clause of the 14th Amendment to the Constitution of the United States because it provides an unlawful discrimination against the laboring class and confers a special privilege or immunity on all other persons including the employer, no penalty being provided by the Statute for breach of the contract by the employer.

(7) The Supreme Court of Georgia erred in holding that the trial Court did not err in charging the jury in terms of the Act of August 15, 1903 (Georgia Laws 1903, page 90) [fol. 61] and in refusing Appellant's Request to Charge that said Act is repugnant to the 13th and 14th Amendments

to the Constitution of the United States and to the Act of Congress forbidding peonage found in United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56), enacted to secure the enforcement of the 13th Amendment to the Constitution of the United States.

(8) The Supreme Court of Georgia erred in affirming the judgment of the Superior Court of Wilkinson County, Georgia, convicting the Appellant of violating the Act of August 15, 1903 (Georgia Laws 1903, page 90) as against the Appellant's contention that the said Act is repugnant to the 13th and 14th Amendments to the Constitution of the United States and to the provisions of the Act of Congress forbidding peonage found in United States Revised Statutes, Section 1990, 5526 (8 U. S. C. A. 56), enacted to secure the enforcement of the 13th Amendment to the Constitution of the United States.

#### PRAYER FOR REVERSAL

For which errors, the Appellant, Ira Taylor, prays that the said Judgment of the Supreme Court of the State of Georgia, dated March 13, 1941, be reversed and a judgment rendered in favor of said Appellant setting aside his conviction, releasing him from custody and for all other proper relief.

Leonard Haas, Thomas Taylor Purdom, Attorneys  
for Appellant, Ira Taylor.

Haas, Gardner, Lyons & Hurt, Of Counsel.

[File endorsement omitted.]

[fol. 62]

IN SUPREME COURT OF GEORGIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed April 8, 1941

The Appellant, Ira Taylor, in the above entitled cause having prayed for an Appeal to the Supreme Court of the United States from a judgment rendered in said cause by the Supreme Court of the State of Georgia on March 13, 1941, and having presented and filed his Petition for Appeal, Assignments of Error, Statement of Jurisdiction, and



Prayer for Reversal, pursuant to the Statutes and Rules of the Supreme Court of the United States in such case made and provided,

It Is Hereby Ordered that an Appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Georgia in the above entitled cause, as provided by law, and It Is Further Ordered that the Clerk of the Supreme Court of the State of Georgia shall prepare and certify a transcript of the Record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within forty (40) days from this date.

It Is Further Ordered that the mandate of this Court be withheld and be not returned to the trial court until ten (10) days after the final decision on this Appeal by the Supreme Court of the United States.

It Is Further Ordered that security costs be fixed in the sum of Five Hundred Dollars (\$500.00) and that the Appeal Bond presented herewith be, and the same hereby is, approved.

[fol. 63] This 8th day of April, 1941.

Chas. S. Reid, Chief Justice of the Supreme Court  
of the State of Georgia.

[File endorsement omitted.]

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[fols. 64-81] Citation, in usual form, showing service on Ellis Arnall et al., filed April 8, 1941, omitted in printing.

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[fols. 82-85] Bond on appeal for \$500.00, approved and filed April 8, 1941, omitted in printing.

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[fol. 86] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 87] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION  
OF PARTS OF RECORD TO BE PRINTED—Filed May 5, 1941

Comes now Ira Taylor, the Appellant in the above entitled cause, and states that the points upon which he intends to rely in this case in this Court are as follows:

Point 1. The Statute of the State of Georgia, to-wit the Act of August 15, 1903 (Georgia Laws 1903, page 90) is



unconstitutional and void in that it is violative of the 13th Amendment to the Constitution of the United States which prohibits slavery or involuntary servitude except as punishment for crime, and of the Act of Congress forbidding peonage found in the United States Revised Statutes Section 1990, 5526 (8 U. S. C. A. 56) enacted to secure the enforcement of the 13th Amendment to the Constitution of the United States.

Point 2. The said Statute of the State of Georgia is unconstitutional and void in that it is violative of the Due Process and Equal Protection Clauses of the 14th Amendment to the Constitution of the United States.

Point 3. The Supreme Court of the State of Georgia erred in ruling that the aforesaid Statute was a valid and constitutional regulation.

Point 4. The case is controlled by the decision of this Court in *Bailey v. Alabama*, 219 U. S. 219.

[fol. 88] The parts of the Record which Appellant thinks necessary for a consideration of the Points relied upon are as follows:

- (1) The indictment (R. page 7);
- (2) Demurrer to the indictment (R. page 9) and Order of the trial Court overruling the Demurrer (R. page 13), and Exceptions pendente lite filed with reference thereto (R. page 15);
- (3) Charge of the Court (R. page 25) and Defendant's Request to Charge (R. page 30);
- (4) Verdict and sentence (R. page 16);
- (5) Amended Motion for New Trial (R. page 32) and Order overruling the same (R. page 50);
- (6) Brief of the Evidence (R. page 17);
- (7) Bill of Exceptions (R. page 1);
- (8) The decision of the Supreme Court of Georgia (R. page 53) and statement of the case as set out therein.
- (9) The Petition for Appeal (R. page 58), the Order allowing the same (R. page 62), Citation and Acknowledgment of Service thereon (R. page 64);
- (10) Appellant's Statement of Jurisdiction (R. page 65);
- (11) Appellant's Notice and Statement directing attention to the provisions of Paragraph 3 Rule 12 (R. page 80);
- (12) Appellant's Bond (R. page 82).

[fol. 89] (Attached hereto is a list of duplications appearing in the Record.)

Respectfully submitted, Leonard Haas, Thomas Taylor Purdom, Attorneys for Appellant.

Haas, Gardner, Lyons & Hurt, of Counsel.

Due and legal service of the foregoing Statement of Points, and of the parts of the Record relied on is hereby acknowledged.

This 1st day of May, 1941.

The State of Georgia, by Emil J. Clower, Asst. Attorney-General of the State of Georgia; C. S. Baldwin, Jr., Solicitor General of the Gemulgee Circuit.

[fol. 90]

## Appendix "A"

### Duplications in the Record

The following repetitions and duplications occur in the Record:

(1) The Statute of the State of Georgia, to-wit, the Act of August 15, 1903 (Penal Code 715-716) is set out on pages 14, 27-28, and 66;

(2) The Opinion of the Supreme Court of Georgia is set out in full on pages 53-56 and 76-79.

[fol. 91] [File endorsement omitted.]

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Endorsed on cover: In forma pauperis. File No. 45,367. Georgia Supreme Court. Term No. 70. Ira Taylor, appellant, vs. The State of Georgia. Filed May 5, 1941. Term No. 70, O. T., 1941.

